

*Legal Guide K-3***LEGAL AFFAIRS**1625 NORTH MARKET BLVD., SUITE S 309
SACRAMENTO, CA 95834**WHEN YOU DECIDE TO IMPROVE YOUR HOME***October 1996*

It may shock you to know that many homeowners like you will suffer major financial loss or even lose their homes as a result of trickery and unfair home improvement sales schemes.

The following questions and answers will help you recognize and avoid tricks and schemes which are used by a small number of home improvement contractors to get you to purchase home improvements which are overpriced, which you can't use or afford, or which don't measure up to what the company has promised.

The following questions and answers also give guidance on what you can do if you are unhappy with the improvements you've purchased, and how to save your home if you are threatened with foreclosure.

How Can You Recognize Unfair Schemes So That You Can Avoid Them?

1. Home improvements such as carpets, aluminum siding, furnaces, insulation, patios and air conditioners are often sold door-to-door. This doesn't mean that everyone who comes to your door is out to trick you, but be on your guard.
2. Watch out for high prices. Unless you've compared prices offered by other companies, there is no way for you to know if you are paying too much. Some homeowners like you end up paying double (or more) what the work would cost if you hired an honest home improvement contractor.
3. Watch out for promises of rebates and discounts. Although these promises may sound tempting, you usually end up paying for these "special deals" in one way or another.

4. Beware of high pressure sales tactics. For instance, don't be taken in by the story that unless you buy today, the price will double. Never sign a contract just to get rid of the sales agent.
5. If an offer seems to be "too good to be true" -- it probably is too good to be true.

How Can You Protect Yourself?

1. Never act on impulse.
2. Whenever a seller offers "something for nothing," beware.
3. Always compare the proposals of at least two firms before you act.
4. Remember that almost everything you sign is a contract. Some contracts can be cancelled, but many can't.
5. Never sign anything you don't understand.
6. A home improvement contract for a job that costs more than \$500 in material and labor must be in writing.
7. Before you sign a contract or other document, make sure you know all the important terms, such as:
 - Is the quoted price the total price? Does it include the cash price, the finance charges (the cost of buying on credit), and all other charges?
 - How much are the payments? When do they begin

and end? Are all the payments the same? Is there a large one (called a "balloon payment") at the end?

- If you are having construction work done, what are the starting and completion dates?
- Does the written contract state your agreement correctly? Never assume that it does.
- Does the contract form contain any blank spaces to be filled in later? If so, don't sign until they are filled in.
- Are you absolutely sure you should sign? If not, take a day or two to think about the contract before you sign.

8. Choose a contractor carefully.

- Write down a description of the work you want done before you talk to the contractor. This will help you decide what you want, and will help avoid misunderstandings, or a sales pitch for extra work.
- Have a good idea what the job should cost. Many home improvements, especially those sold door-to-door, are grossly overpriced.
- Get names of reputable contractors from friends or neighbors.
- Check the yellow pages of the telephone directory for leads.
- Any job that costs \$300 or more for material and labor must be performed by a licensed contractor who holds a current, valid license from the Contractors State License Board in the specialty for which he or she is contracting.
- Check the contractor's "pocket license." The name on the license should match the contractor's name or business name. Also ask the contractor for another form of identification. The name on the pocket license and the contractor's other identification should match.
- Call the Contractors State License Board at 1-800-321-CSLB (327-9707 in Sacramento) and ask if the license is valid. Also check with the Board for

the contractor's disclosable complaint history and any prior legal actions that may have been taken against the contractor. This information is available on their web site at:

http://www2.cslb.ca.gov/CSLB_LIBRARY/license+request.asp

- Ask the contractor for the names of previous customers. Talk to them. Ask if they were satisfied with the work.
- Don't be afraid to ask the contractor to repeat or explain anything you don't understand.
- Shop around. Compare prices, materials, and the time necessary to complete the job. Don't feel you have to buy the first thing you see because someone is pressuring you.
- Don't be afraid to tell the contractor that you want to discuss the proposal with a friend, spouse, lawyer, or someone else, before you sign.
- If you are uncertain, do discuss the proposal with someone else.
- Don't make an excessive downpayment. California law limits the amount of downpayment in any home improvement contract to \$1,000 or ten percent of the contract price (excluding finance charges), whichever is less. (The downpayment for a contract to construct a swimming pool cannot be more than \$200 or two percent of the contract price, whichever is less.)
- Get, read and understand the booklet, "**What You Should Know Before You Hire a Contractor**" from the Contractors State License Board, P.O. Box 26000, Sacramento, CA 95826.

How Can You Protect Against Security Interests and Mechanics' Liens?

1. Often a contractor will ask you to give the contractor a lien on your home as security for payment. This means that if you don't make the payments you agreed to make as they fall due, your home may be sold to pay for the improvements.
2. The contractor, however, may not tell you that the contractor is taking a lien on your property. This information may be buried somewhere in the

contract, or in one of the other papers you sign, in language that is difficult to understand.

3. This is why you should read the entire contract carefully before signing. Otherwise you could lose your home.
4. If you don't want to give the contractor a security interest on your property, don't sign a contract that gives the contractor that right. Other contractors may not require a security interest.
5. Even if the contractor has not taken a security interest on your home, you're not "out of the woods" yet. If the contractor fails to pay the subcontractors or suppliers who perform the actual improvements to your home, they can file a mechanics' lien on your home, even if you've paid the contractor.
6. A mechanics' lien gives someone who hasn't been paid the right to take your property as payment. So you may end up paying twice for the improvements to your home.
7. Your best protection against mechanics' liens is to deal only with reputable contractors; require performance and labor and materials bonds; and secure "releases of lien" from all subcontractors before any payment is made to the contractor. In large projects, you also may want to consider using a joint control company to handle and disburse project funds.
8. Also, add language such as this to the contract:
"Final payment is not due until after the contractor has delivered to the homeowner complete releases of all mechanics' liens arising out of the contract."

What Rights Do You Have Once You Have Signed An Agreement?

1. If you have agreed with a creditor to finance home improvements and have given a lien on your home as security for payment, you have a right to cancel the agreement in most cases. (The creditor may be a lender or the contractor.)
2. Each consumer whose ownership interest is subject to the security interest has the right to cancel the transaction until midnight of the third business day after (a) consummation of the contract, or (b) the creditor's delivery of the required notice of the right

to rescind, or (c) the creditor's delivery of all material disclosures, whichever occurs last.

("Material disclosures" include the annual percentage rate for the loan, the finance charge, the amount financed and other key loan terms.)

3. In the absence of a true emergency, no work can be started on your property during the three-business-day cancellation period. This right is granted by the federal Truth in Lending Act.
4. If you wish to cancel the agreement within the three-business-day period, you must notify the creditor in writing of your decision to cancel. You can use the written notice the creditor has provided. Simply sign and date it and mail or deliver it to the address shown on the notice. Or, you can send or deliver a telegram or letter to the creditor at the address shown on the notice informing the creditor of your decision to cancel.
5. Within 20 days after receiving the written notice of cancellation, the creditor must return any downpayment, money or property that was received from you. If you have received any property from the creditor, you may hold it until the creditor returns your money or property. If the creditor refuses to take the property back within 20 days after you have made it available to the creditor, you may keep it, and you have no further obligation to pay for it. Once you have cancelled, the creditor has 20 days to take the lien off your home.
6. If you have questions about your rights under this law, consult a lawyer.
7. If the contract was signed in your home or away from a regular place of business of the contractor, you also have a three-business-day right to cancel the contract, even if the contract does not give the seller a security interest in your home. You can cancel by following the written instructions given to you by the sales agent. This three-business-day period begins to run at the time you receive the written notification of your right to cancel. It continues until midnight of the third business day after you receive that notice.

If You Are Dissatisfied With The Improvements Do You Have To Pay For Them?

1. If the goods you have received or the work that was

done to your home are not what you agreed to, and you are dissatisfied, you may have a right to seek recovery of any losses you have suffered as a result of the other party's failure to carry out the agreement as agreed.

2. For instance, if the contract called for the installation of a white gazebo and the one that is installed is unpainted, and the contractor refuses to paint it white, you can hire someone else to paint the gazebo white, and then go to small claims court to recover your out-of-pocket costs from the contractor. If you still owe something on the contract, you can deduct the amount you have paid to the second person (if the amount is reasonable) from the amount you still owe to the contractor.
3. If you have paid the original contractor in full, you can recover the amount to which you are entitled (if it is under \$5,000) in a small claims court action which you can file against the contractor.
4. If the home improvement is financed, you also may be able to deduct the amount of your claim from what you still owe to the financing agency. However, if the home improvement was financed by a loan that you yourself obtained, you probably cannot deduct the amount from what you owe the lender. To find out for sure, consult a lawyer.
5. If the contractor has committed a violation of law, the contractor's license may be suspended by the Contractors State License Board. To initiate the process, you must file a written complaint with the Board.
6. The Board also provides arbitration programs to help consumers and contractors work out their differences. The Board has two publications on its arbitration programs, "Voluntary Arbitration Program Guide" and "Mandatory Arbitration Program Guide." You can request copies of these guides from the Board at the address given on page 2.

What Can You Do If You Are Being Threatened With Foreclosure?

1. Before your home can be sold, the law requires that a notice must be filed with the county recorder, and a copy also must be mailed to you. This notice states the exact way that you are in default -- for instance,

that you are behind in your payments in the amount specified in the notice. The notice must also state that if the default is not cured (if you don't make up the back payments), the property will be sold.

2. You have at least 90 days from the date the notice of default was recorded to make up the back payments and pay trustee's costs. If you make these payments within that period, your home may not be sold. If you have not made your payments within that period, a notice of sale will be mailed to you. Your home can be sold 20 days after the notice of sale is sent to you. If you receive a notice of sale, you can still save your home, but you must consult a lawyer. Be sure to read all notices you receive, so that you will know how much time you have to save your home.
3. If your home is in foreclosure and you hope to save it, you should talk to a lawyer immediately to find out exactly what you should do. Once you have received the notice of sale, the matter requires urgent action if you want to save your home. If you want to consult a lawyer but you cannot afford one, contact your county bar association's lawyer referral service or the nearest legal aid office.

NOTICE: We attempt to make our legal guides accurate as of the date of publication, but they are only guidelines and not definitive statements of the law. Questions about the law's application to particular cases should be directed to a specialist.

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